

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 3:05-cr-00241-LRH-VPC

Respondent/Plaintiff,

ORDER

v.

JAMES BRETT ZIMMERMAN,

Petitioner/Defendant.

Before the court is defendant James Brett Zimmerman's ("Zimmerman") Notice of Filing of Second or Successive Petition in the Ninth Circuit and Request to Consider Motion to Vacate Under 28 U.S.C. § 2255 (ECF No. 95) as a Protective Filing. ECF No. 96. In his notice, Zimmerman requests that his motion to vacate under 28 U.S.C. § 2255 (ECF No. 95), filed on June 8, 2016, be considered a protective filing and that it be held in abeyance until such time as the Ninth Circuit grants his application before it for leave to file a second or successive motion to vacate his sentence. Good cause appearing,

IT IS ORDERED that Zimmerman's Notice of Filing of Second or Successive Petition in the Ninth Circuit and Request to Consider Motion to Vacate Under 28 U.S.C. § 2255 as a Protective Filing (ECF No. 96) is hereby **GRANTED**. Defendant's motion to vacate will be considered a protective filing and will be held in abeyance until such time as the Ninth Circuit acts upon his application to file a second or successive motion to vacate his sentence.

1       The court also notes that in his motion to vacate defendant seeks either a  
2 release from prison or an order that he be released and scheduled for a bond hearing.  
3 As the original sentencing court, this court is familiar with defendant Zimmerman and his  
4 criminal history. The court reconfirms earlier findings that there are no conditions or  
5 combinations of conditions which will reasonably assure the appearance of the  
6 defendant as may be required for further proceedings and that there would also be a  
7 danger to any community in which the defendant might be released. Furthermore,  
8 regardless of whether his present sentence is vacated, he will remain subject to a  
9 potential maximum sentence of twenty (20) years or more in prison.

10       IT IS SO ORDERED.

11       DATED this 5th day of July, 2016.

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14 LARRY R. HICKS  
15 UNITED STATES DISTRICT JUDGE  
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